ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-177
Petition for Section 11 Biennial Review	)	
filed by SBC Communications, Inc.,	)	
Southwestern Bell Telephone Company,	)	
Pacific Bell, and Nevada Bell	)	

COMMENTS OF AT&T CORP.

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Pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM"),[1] AT&T Corp. ("AT&T") submits these comments on SBC Communications, Inc.'s ("SBC") Petition for Section 11 Biennial Review ("Petition") of various Commission regulations.

I. INTRODUCTION AND SUMMARY

In the NPRM, the Commission rejects as unworkable SBC's call for a "mega-rulemaking" that would reform essentially every aspect of its regulatory oversight of ILECs. NPRM at ¶ 6. Instead, it has elected to limit the focus of this proceeding to only certain of the Commission rules which SBC challenges. These rules involve: (1) rate of return prescriptions (47 C.F.R. § 65.101), (2) cash working capital studies (47 C.F.R. § 65.820(d)),

[1] 1998 Biennial Regulatory Review -- Petition for Section 11 Biennial Review filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, CC Docket No. 98-177, Notice of Proposed Rulemaking, FCC 98-238 (released November 24, 1998).

(3) tariffing of ILEC services, (4) the Part 64 cost allocation manual, (5) affiliate transactions (47 C.F.R. § 32.27(c)), and (6) Wireless Radio Rules. Id. at ¶¶ 7-13. In these Comments, AT&T demonstrates that SBC's proposals for modifying or eliminating those Commission rules are either without merit, or are being appropriately considered in other proceedings.

II. COMMENTS ON SBC's SPECIFIC PROPOSALS

A. Rate of Return Prescription (47 C.F.R. § 65.101)

The Commission should reject SBC's claim that the rate of return prescription rules are "no longer needed under price cap regulation." Petition at 10. See NPRM at ¶ 7. To the contrary, the rate of return prescription rules serve a crucial role in a number of important Commission processes, for both price cap and rate of return ILECs.[2] Rather than viewing these rules as unnecessary, the Commission has in fact instituted a proceeding to update its rate of return prescription to reflect more current and realistic economic conditions.[3]

The rate of return prescription obviously plays an important role in the low-end adjustment mechanism under the Commission's price cap rules. The low-end adjustment permits ILECs to increase their price cap indices to a level that allows them to earn 10.25

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[2] As the Commission has explained, "[t]he prescribed interstate rate of return is used to ensure that the rates filed by the approximately 1400 incumbent local exchange carriers subject to rate-of-return regulation continue to be just and reasonable." NPRM at n.12 citing generally Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes, 10 FCC Rcd 6788 (1995).

[3] The Commission recently confirmed the vital need for rate of return regulation by proposing to represcribe the authorized rate of return of non-price cap ILECs because "the current prescribed rate of return is much higher than the rate required to attract capital and earn a reasonable profit." Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 98-166, Notice Initiating A Prescription Proceeding and Notice of Proposed Rulemaking, FCC 98-222, released October 5, 1998, at ¶ 5 ("Rate of Return Prescription NPRM").

percent, based on the prescribed rate of return.[4] The Commission is currently considering, in the context of its rate of return represcription proceeding, whether to change the low-end adjustment.[5]

Additionally, the Commission's rate of return prescription is an essential element needed to define costs for a number of important purposes in addition to the low end adjustment. For example, rate of return prescriptions are needed to define costs so as to ensure effective monitoring of LEC price cap performance, and as an aid in determining whether the existing productivity factor is appropriate. Rate of return factors are also an input used in the calculation of end user common line charges. Rate of return prescriptions also provide a basis for evaluating the service cost studies submitted by the ILECs to support exogenous factor adjustments, new service rates, and rates above existing price caps. Accordingly, the Commission's rate of return processes continue to have vitality and utility, and thus SBC's suggestion that these processes can be discarded is without merit.

B. Cash Working Capital Studies (47 C.F.R. § 65.820(d))

The Commission should also reject SBC's proposals to modify Section 65.820(d) of the rules, which governs the calculation of cash working capital for Class A carriers. Petition at 10-11. See NPRM at ¶ 8. Cash working capital constitutes the average amount of

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[4] Rate of Return Prescription NPRM at ¶ 53. See Price Cap Performance Review for Local Exchange Carriers, First Report and Order, 10 FCC Rcd 8961, 9035-37 (1995); Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6806-07 (1990) (establishing the low end adjustment formula).

[5] Rate of Return Prescription NPRM at ¶¶ 54-55.

investor-supplied monies required to fund the ILECs' interstate operations.[6] The importance of reliable cash working capital studies has been underscored by the Commission in its review of the annual access filings of Class A carriers.[7] The Commission has given the ILECs discretion to use either the lead lag or simplified formula methods in calculating their cash working capital requirements.[8] Thus, contrary to SBC's assertion, the Commission's cash working capital study requirements are not unreasonably burdensome, but rather are reasonable and afford the ILECs considerable flexibility.

C. Detariffing of Services Subject to Competition

The Commission should emphatically deny SBC's request that it detariff the ILECs' special access, direct trunked transport, operator services, directory assistance and interexchange services on the grounds that these services are competitive. Petition at 21-23. See NPRM at ¶ 9. There is absolutely no justification for the Commission to permit the detariffing of any of the ILECs' local exchange and exchange access services so long as the ILECs continue to exercise market power and possess the capacity for charging unjust and unreasonably discriminatory access rates.

At the outset, SBC's broad claim that all the services identified in its Petition are competitive and that the elimination of tariff regulation would benefit consumers is both

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[6] See Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, 4 FCC Rcd 1697, 1698 (1989); 47 C.F.R. § 65.820(e).

[7] 1997 Annual Access Tariff Filings, 13 FCC Rcd 5677, 5700-5702 (Com. Carr. Bur. 1997).

[8] See 1997 Annual Access Tariff Filings, 13 FCC Rcd 10597, 10611-12 (1998). For instance, the Commission has suspended and investigated such filings because adequate explanations of cash working capital net lag periods were not provided.

unsupported and incorrect. SBC bases its claim on a study it commissioned in 1996-97 of the high capacity market in Dallas and Los Angeles. However, SBC failed to attach this study to its Petition, nor describe the contents, methodology, or details of the study.[9] Consequently, SBC's assertion that its enumerated local exchange and exchange access services are competitive has absolutely no probative value. In addition, SBC provides no information about competitive market conditions in service areas outside its region to support its contention that the subject ILEC services provided in those markets are competitive.

Successive and consistent Commission findings have shown that the ILECs, including SBC, continue to dominate the local exchange and exchange access service markets and that these markets are not competitive.[10] The Commission recently confirmed these findings in a

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[9] Petition at 22, n. 37.

[10] See, e.g., Application by SBC Communications, Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma, 12 FCC Rcd 8685 (1997); Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543 (1997); Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana, FCC 98-271 (rel. Oct. 13, 1998); Application of BellSouth Corporation et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana, 13 FCC Rcd 6245 (1998); Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, 13 FCC Rcd 539 (1997), aff'd sub nom. BellSouth Corporation v. F.C.C., No. 98-1019, Dec. 22, 1998 (D.C. Circuit). See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996), aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. F.C.C., 117 F.3d 1068 (1997), and Iowa Util. Bd. v. F.C.C., 120 F.3d 753 (8th Cir. 1997), petition for cert. granted, No. 97-826 et al. (U.S. Jan. 26, 1998).

detailed study of competitive conditions in the nationwide local markets which concluded that the ILECs' share of the local exchange and exchange markets was 97%.[11]

In view of the ILECs' monopoly position, the Commission cannot forbear from enforcing its tariffing requirements with respect to the ILECs' services as SBC proposes. In fact, given the absence of competitive market conditions, forbearing from enforcing the Commission's tariffing policies would diminish rather than enhance competition among providers of communications services, and would undermine rather than promote competitive market conditions. Forbearing from enforcing the Commission's tariffing policies would give the ILECs essentially free rein to pursue a host of anticompetitive practices designed to thwart competitive entry into their markets and to inflate their already excessive access charges to the substantial detriment of consumers of interexchange services. The Commission therefore must reject SBC's detariffing proposal.

D. Part 64 Cost Allocation Manual (CAM) Simplification

The Commission should reject SBC's proposals to modify the Part 64 CAM requirements, 47 C.F.R. §§ 64.903, 64.904. Petition at 34-35; see NPRM at ¶¶ 10-11. First, as the Commission noted in its NPRM, it is currently considering revising its CAM requirements in other proceedings, including in the Accounting Reductions NPRM. In that proceeding, the Commission proposes to streamline the CAM filing and CAM audit

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[11] "Local Competition," Industry Analysis Division, Common Carrier Bureau, December 1998, at 5. The Commission recently concluded that sufficient competition has yet to develop in the local exchange market to permit the Commission to refrain from regulating depreciation, noting that the ILECs had a 97% market share in 1997. See 1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers, CC Docket No. 98-137, FCC 98-170, released October 14, 1998, at ¶ 7.

requirements applicable to mid-size local exchange carriers by reducing the frequency of independent audits of the cost allocations these carriers must perform.[12]

Second, SBC's proposals would undermine the fundamental purpose of the CAM requirements because they would deny the Commission the ability to detect and deter cross-subsidization of the ILECs' non-regulated services. The continuing monopoly position of the ILECs in the local exchange and exchange access markets affords them ample ability to distort their access rates by cross-subsidizing these offerings.

The Commission noted its continued need for effective CAM requirements, even for price cap LECs, in its Accounting Safeguards Order. There the Commission stated that "[t]he fact that an incumbent local exchange carrier subject to the Commission's price cap regulation does not currently have a potential sharing obligation does not obviate the need for rules governing their allocations of costs between regulated and nonregulated activities. . . . Moreover, because these incumbent local exchange carriers' intrastate service may be subject

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[12] NPRM at ¶ 11, citing 1998 Biennial Regulatory Review -- Review of Accounting and Cost Allocation Requirements, Notice of Proposed Rulemaking, 13 FCC Rcd 12973, 12979-12981 (1998) ("Accounting Reductions NPRM"). The Accounting Reductions NPRM did not propose to alter the annual audit requirements governing the largest ILECs because those carriers "tend to conduct a much greater transactional volume of competitive services than the smaller and mid-size carriers," and consequently "there is a greater risk of harm to consumers and competitors from cross-subsidization among these carriers." 13 FCC Rcd at 12981. As the Commission also noted, the Common Carrier Bureau has addressed SBC's proposals to streamline CAM filing procedures for ILEC affiliate transactions and recently streamlined the CAM filing procedures applicable to incumbent LECs' affiliate transactions. SBC's proposal to reverse the Commission's decision to treat incidental interLATA services as non-regulated was presented in SBC's pending petition for reconsideration of the Accounting Safeguards Order. NPRM at ¶ 11 & nn.19-20. See Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 17539 (1996) ("Accounting Safeguards Order").

to cost-of-service regulation or to a form of price cap regulation that involves potential sharing obligations or periodic earnings reviews, the incumbent local exchange carriers may still have an incentive to assign a disproportionate share of costs to regulated accounts."[13] For this reason, the Commission concluded that its Part 64 cost allocation rules "remain important to our efforts to ensure that the rates for regulated services are just, reasonable, and non-discriminatory," and thus serve significant public interest purposes.[14] Accordingly, the Commission should not accept SBC's suggestions to modify the CAM requirements.

E. Affiliate Transaction Rules

The Commission appropriately declined to consider SBC's proposals to modify the affiliate transaction rules because it is currently considering the issues SBC raised in the context of the pending petitions for reconsideration of its Accounting Safeguards Order. See NPRM at ¶ 12. Nonetheless, the Commission has requested that parties present any other suggestions for simplifying those rules consistent with their fundamental purpose of detecting and inhibiting improper cost allocations and cross-subsidization. Id. AT&T submits that there is no need for the Commission to modify the affiliate transaction rules in this proceeding.

The Commission's current affiliate transaction rules are the product of more than a decade of experience with the rules adopted in the Joint Cost Order governing the

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13 Accounting Safeguards Order, 11 FCC Rcd at 17661.

14 Id.

relationship between the ILECs' regulated and nonregulated operations.[15] In the Accounting Safeguards proceeding, the Commission refined its Joint Cost Order affiliate transaction rules in order to satisfy the various specific commands of Sections 260 and 271-276 of the Act, after taking into account the detailed concerns of all parties to the proceeding, including SBC and the other RBOCs. The affiliate transaction rules have been in effect for less than two years,[16] and the Commission is still considering proposals to refine them,[17] even as it has entertained waivers of those rules.[18] In short, the affiliate transaction rules are of very recent vintage and the Commission is only beginning to develop experience with them. In these circumstances, there is no justification for the Commission to modify those rules in the instant proceeding.

F. Wireless Radio Rules

The Commission need not entertain SBC's proposals for revising its wireless radio service rules. Petition at 35-36. See NPRM at ¶ 13. As the Commission noted, other proceedings are considering streamlining those rules, accelerating the conversion to the

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15 Id. at 17586-17655. See 47 C.F.R. §§ 32.27, 53.209-53.211. See also Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298, 1334-37 (1987)("Joint Cost Order").

16 See Public Notice DA 97-197, released August 5, 1997, 12 FCC Rcd 11670.

17 See NPRM at n. 20 citing SBC Petition for Reconsideration of Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150. See also "Aliant Communications Co. Files Petition for Reconsideration of Section 32.27(c) of the Commission's Rules," Public Notice, 13 FCC Rcd 7173 (1998).

18 See, e.g., "U S WEST Files Petition for Waiver of the Affiliate Transactions Rules," Public Notice, DA 98-2387 (released Nov. 25, 1998); "Southern New England Telephone Company Files Petition for Waiver of Section 32.27 of the Commission's Rules," Public Notice, DA 98-1332 (released July 1, 1998); Aliant Communications Co. Petition for Waiver of Section 32.27(c) of the Commission's Rules, 13 FCC Rcd 10112 (Com. Carr. Bur. 1997).

universal licensing system, and determining whether the Commission should forbear from enforcing any of its wireless radio rules.[19] Moreover, as the Commission concluded, the "universal licensing system proceeding addresses many of the issues SBC raises in its petition." NPRM at ¶ 13. In this light, the Commission appropriately decided that it would be duplicative for the Commission to consider SBC's specific proposals in the instant proceeding.[20]

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[19] NPRM at ¶ 13. See 1998 Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, Notice of Proposed Rulemaking, FCC 98-25, released March 25, 1998. The Commission is also considering forbearing from applying other wireless radio regulations. NPRM at ¶ 13. See Personal Industry Association's Broadband Communications Services Alliance's Petition for Forbearance for Broadband Communications Services; Biennial Regulatory Review -- Elimination or Streamlining of Unnecessary and Obsolete CMRS Regulations, WT Docket No. 98-180, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-134, released July 2, 1998.

[20] SBC suggests that the Commission should delete the existing 47 C.F.R. § 20.11 regarding wireless carriers' rights to interconnection, inasmuch as this requirement is also the subject of the Commission's local competition rules. See Petition at 35. Rule 20.11 predated the Commission's local competition rules, and therefore represents a separate and independent source of interconnection rights for wireless carriers. In the event that the Commission does choose to eliminate Rule 20.11, it should make clear that this action does not diminish or affect the ability of any wireless carrier to initiate or pursue Section 208 complaints or other relief based on prior ILEC violations of the requirements of § 20.11.

III. CONCLUSION

SBC's proposals for eliminating or modifying the Commission's Rules are either already the subject of ongoing Commission proceedings, or are without merit. Accordingly, the Commission should deny SBC's Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Margaret Brue, do hereby certify that on this 11th day of January, 1999, a copy of the foregoing "Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties listed below:

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